

Small Business Regulatory Fairness Board (SBRFB)

ANNUAL REPORT - FY 2016

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January 11, 2017

The Honorable Eric Greitens
Governor of the State of Missouri

The Honorable Ron Richard
President Pro Tem of the Missouri Senate

The Honorable Todd Richardson
Speaker of the Missouri House of Representatives

Dear Governor Greitens, President Pro Tem Richard and Speaker Richardson:

To our great distress, the Missouri Small Business Regulatory Fairness Board (SBRFB) continues to operate on a sub-par level. One year ago we led our report with nearly the same concerns, citing lack of funding, little DED support, and too many board vacancies. This triggered an audit in FY2016 of the SBRFB by Nicole Galloway. The audit agreed with our self-assessment, finding that the primary and ongoing barriers to board success were lack of DED administrative support, failure of DED to request funding, and too many board vacancies due to lack of appointments being made, primarily by Governor Nixon. In twelve months since our last report, there has been no improvement.

The audit recommendations called for the Board to develop a tracking process for regulations, work with the Governor and certain Legislative leaders to get vacancies filled, and to work with DED and the legislature to get appropriate funding. The SBRFB re-created the tracking system and are reviewing regulations to a limited extent. The SBRFB wrote both DED and the Governor pleading for appointments, for admin support, and for funding. No response was ever received. No vacancies were ever filled. DED, once again, failed to follow audit recommendations and request funding for fiscal year 2018.

Nearly everyone agrees that “small businesses are the engine of the economy.” It begs the question as to why the only state board, focused entirely on small businesses, receives nearly no support. The SBRFB is uniquely placed to help identify those regulations that restrict job growth in Missouri. We work one-on-one with the agencies drafting proposed rules that affect small businesses. We are the voice for small business owners who cannot find relief to their state-related problems anywhere else. The SBRFB needs to get back to full operation to help both small businesses and the state of MO reap the benefits of having a business-friendly government and strong economic growth.

One issue remains paramount. The SBRFB members are small business people busy running their businesses. Not one member has anything to gain personally from their volunteer service. We do it for the betterment of all small businesses.

In fulfilling its duties outlined in 536.310 RSMo, the SBRFB shall provide an evaluation report to the governor and the general assembly. Please accept the attached such report and evaluation.

Best Regards,

The Small Business Regulatory Board

SBRFB MEMBERS

Nancy Zurbuchen, Chair - Elected by the Board, Motion Multimedia, Wildwood, MO (Appointed by Senate Majority)

Scott George, Vice Chair - Elected by the Board, Mid-America Dental & Hearing Center, Mt. Vernon, MO (Appointed by House Majority)

Jim Seigfreid, Retired Small Business Owner, Warrensburg, MO (Gubernatorial Appointment, Public Member 4)

Rep. Alan Green, Missouri House of Representatives, Florissant, MO (Appointed by House Minority)

Sheila Forrest, Afro World Hair and Fashion Company, St. Louis, MO (Appointment by Statute, Minority Business Advocacy Commission Chair)

(Gubernatorial Appointment, Public Member 1)
VACANT

(Gubernatorial Appointment, Public Member 2)
VACANT

(Gubernatorial Appointment, Public Member 3)
VACANT

(Appointed by Senate Minority)
VACANT

BACKGROUND

The Missouri Small Business Regulatory Fairness Board (SBFRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements:

- 1) State agencies take into account small businesses when promulgating new rules;
- 2) State agencies take into account small businesses when enforcing new rules and regulations;
- 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed;
- 4) Established the Small Business Regulatory Fairness Board;
- 5) Granted judicial review to small businesses; and
- 6) Defined small businesses as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456, provides staffing and support for the SBRFB Commission.

Board Responsibilities

HB 576 and SB 456 states three main responsibilities for the board:

- 1) Provide state agencies with input regarding rules that adversely affect small businesses;
- 2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and
- 3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

SBRFB MEETINGS IN FY2016

Six meetings were held in FY2016 by the Board on the following dates:

July 16, 2015

October 29, 2015

December 3, 2015

April 5, 2016

April 18, 2016

June 2, 2016

AUDIT OF THE SBRFB by the STATE AUDITOR

The SBRFB Annual Report of 2015, published December 28, 2015, was a blunt assessment of the board's dire situation. In writing that we were "operating at a sub-par level," we triggered an audit by Nicole Galloway, the State Auditor. At first the board members were surprised, but quickly realized that an audit was exactly what we needed.

The board was given notice of this in January 2016, the final report being published in May 2016. In between, the board members -- especially the Chair and Vice Chair -- spent hours and hours interacting with the auditor and others, providing literally many dozens of emails and documents, reviewing the draft, writing the board's responses, meeting face to face, and reviewing and responding to the final audit report. So many hours were put to this endeavor that the board members has even less time to put toward the actual work of the board. But we hoped it would result in a positive outcome.

Quoting Auditor Galloway, "The board is, by design, led by private citizens who help make the regulatory process less burdensome on business owners, but without resources or state support, the board's volunteer members are not meeting this critical mission."

The auditor's Report NO. 2016-030, May 2016, and can be read at this link:
<http://app.auditor.mo.gov/Repository/Press/2016030238982.pdf>

The Recommendations in the Audit report read thus:

1.1 Develop a process to document and track proposed regulations provided to the Board, increase efforts to solicit input from small business owners, and ensure evaluation reports are completed on a regular basis.

1.2 Continue to work with the General Assembly and the Governor's office to ensure all Board vacancies are filled.

1.3 Continue to work with the DED and the General Assembly to ensure the Board has funding for staff support to allow the Board to function effectively and comply with state law.

The State Auditor found that DED had failed to provide adequate administrative support, or even request funding in the most recent budget cycles, for this board. DED's response to the audit was that they did not request funding because they believe that the SBRFB is redundant to JCAR. As you may know, JCAR has been a legislative group since 1977. Legislators certainly knew about JCAR when they created the SBRFB in 2004.

In fact, Ms. Galloway, State Auditor, was much stronger in her press release and media audit event. There she stated that DED was not complying with the law in providing staff support. Further, she disagreed with the DED opinion that the SBRFB was redundant to JCAR. She stated that it was unreasonable to expect small businesses to navigate through large complex state agencies and the legislative process; and, that the SBRFB was created to give small businesses a place to go for help.

The audit findings are summarized in the press release published by the State Auditor; it is included in this Annual Report as **APPENDIX A**.

It is important to note that in our Annual Report for 2015, we stated the following, which remains true today:

1.5 FTE for board support was proposed by DED when SBRFB was created under Governor Holden. While authorized by statute several years ago, the only appropriation (2013) was line item vetoed by Governor Nixon. Though it was possible to do so, DED failed to request any SBRFB funding in their budget.

In the early years, DED provided about 1/3 clerical FTE. This enabled SBRFB to establish basic work processes to support the work of the board to take comments from small businesses, host hearings, review some proposed regulations, and publish an annual report.

Over the years the support has been less and less, to the point the board could not fulfill most of its duties, including publishing an annual report for the years 2013 and 2014.

Currently, the board is functioning almost solely on board member volunteer hours, with admin support in the form of meeting notices/minutes/re-establishing notification and tracking some data.

For full explanation of the duties of the full time, analytical position and the .5 admin support position, please refer to the **APPENDIX B** of this report. This spells out in detail the level that this Board could and should be functioning.

A document outlining the appointment criteria for SBRFB board members appears in **APPENDIX C**.

REGULATORY ALERTS SUBSCRIPTION

The lengthy interruption of the regulatory alerts going to board members was solved and the new system has been in use for most of 2016. The board members are getting notification when new rules are proposed. In a 3-step process, DED staff uploads the proposed rule, fiscal note, and small business impact statement that they receive from the agencies to the SBRFB website. This triggers the notification service GovDelivery to notify the page administrator that the page was updated and allows the page administrator to send an email to all subscribers that there is new content on the SBRFB page.

Anyone can subscribe: <https://www.sbrfb.ded.mo.gov/> and click on ‘Regulatory Alerts,’ then click on ‘Subscribe to Regulatory Alerts.’ Indicate those agencies you wish to follow.

REGULATIONS TRACKING SYSTEM

To satisfy the auditor's recommendation, the board members have taken it up on themselves to create a tracking system for proposed regulation review. A proposed log was created, and a screen grab of the draft appears below.

Draft SBRFB Proposed Regulations Log.xlsx - Microsoft Excel														
File Home Insert Page Layout Formulas Data Review View														
Clipboard Font Alignment Number Styles Cells Editing														
A117 3 CSR 10-7.433														
	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	Rule Number	Agency	SBRFB Regulation Tracking Rule Description	Reg Alert	MO Register	Member ID	Member Review	Agency Referral	Agency Response	SBRFB Referral	SBRFB Response	Comments / Disposition		
88	2 CSR 80-2.101	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
89	2 CSR 80-2.110	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
90	2 CSR 80-2.121	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
91	2 CSR 80-2.130	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
92	2 CSR 80-2.141	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
93	2 CSR 80-2.151	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
94	2 CSR 80-2.161	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
95	2 CSR 80-2.170	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
96	2 CSR 80-2.180	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
97	2 CSR 80-2.181	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
98	2 CSR 80-3.060	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
99	2 CSR 80-3.120	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
100	2 CSR 80-3.130	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
101	2 CSR 80-4.010	MDA	Update references to 2015 version	N	6/1/2006	SG	5/25/2016					no impact to smalls		
102	2 CSR 80-5.010	MDA	Inspection Fees-date change	N	5/2/2016	SG	4/27/2016					Does not impact smalls		
103	2 CSR 80-6.041	MDA	Inspection Freq from 12 to 24 Mon	N	3/15/2016	SG	5/12/2016					benefits smalls		
104	2 CSR 90-30.040	MDA	Quality Standards for Motor Fuels.	N	2/1/2016	SG	WIP							
105	2CSR 60-4.030	MDA	Warehouse fees increase	N	2/1/2016	SG	4/25/2016	4/25/2016				did not incl smalls & inc fees		
106		MDC	Conservation			Sheila				Denise.Bateman@mdc.mo.gov				
107	3 CSR 10-1.010	MDC	Org Chg to 3 Directors	N	4/15/2016	SG	5/12/2016					does not impact smalls		
108	3 CSR 10-11.110	MDC	Can't hunt feral hogs on MDC land	N	4/15/2016	SG	5/12/2016					does not impact smalls		
109	3 CSR 10-11.180	MDC	No Lead Shot on Black Island Cons	N	4/15/2016	SG	5/12/2016					does not impact smalls		
110	3 CSR 10-12.125	MDC	Can't hunt feral hogs on MDC land	N	4/15/2016	SG	5/12/2016					does not impact smalls		
111	3 CSR 10-12.130	MDC	Deletes old regs on Mingo Refuge area	N	4/15/2016	SG	5/12/2016					does not impact smalls		
112	3 CSR 10-12.135	MDC	Chg fishing regs on several lakes	N	4/15/2016	SG	5/12/2016					does not impact smalls		
113	3 CSR 10-12.160	MDC	Outdoor Recreational Access Prog	N	4/15/2016	SG	4/27/2016	4/27/2016				affects landowners		
114	3 CSR 10-2.010	MDC	Rescind Req. Manage Forest Crop Lands	N	4/15/2016	SG	5/12/2016					does not impact smalls		
115	3 CSR 10-2.020	MDC	Chg Forest Cropland titles and def.	N	4/15/2016	SF								
116	3 CSR 10-7.410	MDC	Def chg on feral hogs	N	4/15/2016	SG	5/12/2016					does not impact smalls		
117	3 CSR 10-7.433	MDC	Def chg on feral hogs	N	4/15/2016	SG	5/12/2016					does not impact smalls		
118	3 CSR 10-7.455	MDC	Def chg on feral hogs	N	4/15/2016	SG	5/12/2016					does not impact smalls		
119		MODOT	Transportation							Scott.Marion@modot.mo.gov				
120		OA	Administration							Walter.Pearson@oa.mo.gov				
121	1 CSR 10-17.010	OA	Change M/WBE definitions	4/6/2016	Y	5/16/2016	NZ							
122	1 CSR 10-17.040	OA	Chg M/WBE Certification.	4/6/2016	Y	5/16/2016	NZ							
123	1 CSR 10-17.050	OA	Chg M/WBE in Procurement Proc	4/6/2016	Y	5/16/2016	NZ							
124	1 CSR 30-5.010	OA	Chg M/WBE & Disable Vet in Coi	4/6/2016	Y	5/16/2016	NZ							

PERIODIC REVIEW

FY 2016 was the first year of the five-year rolling periodic review of existing regulations. The first group, Administration, Agriculture, Conservation, Economic Development, Elementary and Secondary Education, and Higher Education, all issued their review reports on time.

Early in FY 2016, several SBRFB members reached to small businesses and business associations to spread the word about the first periodic review, and how to provide comment.

Near the end of FY 2016, SBRFB members again conducted outreach regarding the FY2017 agencies (Transportation, Labor and Industrial Relations, Mental Health, and Natural Resources).

Small businesses are encouraged to comment on specific regulations during July and August of each review year. Of course, small businesses can always comment to the SBRFB at any time.

SBRFB PLANS FOR FY2017

- Continue tracking of proposed regulations; make rule review more consistent
- Continue to address the 3 recommendations in the audit
- Obtain funding for all or part of the 1.5 FTE support personnel
- Fill board vacancies: work with the Governor and legislators who are charged with making appointments
- Continue to work with the agency liaisons to keep considerations for small business at the forefront in their agency

STATE AGENCY EVALUATIONS FY2016

In fulfilling its duties outlined in 536.310 RSMo, the Board shall provide an evaluation report to the governor and the general assembly. The SBRFB is charged with tracking and providing results of agency compliance with SBRFB efforts. Agencies working with the SBRFB will ultimately result in higher compliance and fewer complaints from small business owners.

However, confirming the audit conclusions, it is impossible for the volunteer board members to perform the level of ongoing data tracking activities required for meaningful agency evaluation.

Normally the agency evaluations are presented in a table with a grade, based on the data collected during the prior fiscal year. Due to circumstances described above, no agency evaluations were possible for FY2013-FY2015 due to lack of data; and unfortunately, it continues in FY2016.

The Board has worked to build good working relationship with the state agencies over the years. One area of focus has been encouraging the state agencies to involve small business owners in the rule making process, particularly at the stage rules are being written.

Some best practices and challenges are:

Agencies must develop internal processes to ensure that small businesses are in the loop on a regular basis. The purpose is two-fold: 1) to ensure outreach for input from small businesses at the initial stages of drafting new rules or changes, and 2) on the back end to help enforcement, so that small business owner be aware of and understand the rules that affect them.

1) Base-line steps in outreach includes announcing new rule development on the agency website, posting announcement of meetings to the public and to stakeholders directly.

When drafting a new rule or amending an existing rule the Public Service Commission starts the process by opening a working case to obtain input from interested stakeholders. Notice of the working case is sent to businesses, associations, and individuals who will most likely be affected by the rule, seeking comments and suggestions and sometimes holds conferences to discuss the rule.

After a draft of a rule is created, the Department of Health & Senior Services staff solicits comments from and meets with key stakeholders. Meetings are held to address the questions and concerns before the rule is filed.

Before filing any rule the Department of Mental Health posts rule drafts on its webpage for informal comments from stakeholders. Depending on feedback the DMH revises and repost draft rules several times before moving forward with an official filing.

2) Actively reaching out directly to the small business owners, in addition to industry associations, via mail, email, personal contact. Requires maintaining a database of stakeholders which does take time and effort to keep it accurate.

Office of Administration was able to craft rules for the M/WBE supplier diversity program with a significant amount of input directly from business owners, as well as reviewing the state's diversity study with the women, veterans, and minority business owners. They have developed a hot line for technical assistance regarding obtaining supplier diversity certification, resulting in shorter turn-around time to go through the process.

The Department of Insurance, Financial Institutions, and Professional Registration has a known group of associations and business owners they are in contact with, then they ask for other references as needed. Normally new rules come directly from legislation, and they get input on the draft. Their biggest challenge is that small businesses frequently do not have connections that would inform them of rule changes on a regular basis, so they try to take an educational approach to enforcement.

3) Frequently agencies report that they have challenges in finding the small business owners, and that they do not personally know them, especially if a specific industry is needed for input. Sometimes the agencies reach out directly to SBRFB board members and ask for references, which we are happy to give. The Department of Elementary and Secondary Education holds regional public hearings where business representatives are invited to participate, but they also report that they are exploring opportunities to develop standing advisory committees that include small business owners.

The Department of Economic Development reports that they are in daily contact via phone and email with small businesses, primarily answering questions about programs and regulations. They report that a significant amount of resources goes to their import/export global market program.

Certainly trade associations and chambers are primary sources that the agencies should and do reach to for input and participation. This is important, but should not take the place of talking directly to the business owners themselves. The Department of Social Services has recently developed an online survey tool, sent via email, which is used to obtain feedback from stakeholders about proposed regulations. DSS is working to increase outreach to small businesses that do not belong to associations to ensure the community is fully represented.

Enforcement of existing rules and regulations, and the Periodic Review

Department of Labor and Industrial Relations has an on-site program that provides free on-site OSHA reviews, especially in high hazard industries. This helps make workplaces safer, and avoid unnecessary fines. Also training is available for small businesses regarding wage and hour, employment, and security issues. They report that they need help to get the word out this is now available.

The Air Pollution Control Program training program reaches 1,278 stakeholders, from the Department of Natural Resources. Other technical assistance includes permits, site visits, completing technical documents, and help the small business owner understand and apply regulations. They have meetings, conference calls, emails, and discussions with industry representatives. While they do consistently reach out to stakeholders, they also know there is a need for help in finding new small business owners.

The Department of Transportation was one of the agencies slated for the Periodic Review in 2016, and therefore were charged with reviewing every rule. Kudos the Motor Carrier Service Division who took to heart the intent of the Periodic Review and turned what could have been viewed as a negative (more work for them) into a positive for small businesses. They report the following results:

- 64% of are now proposed for rescission, moved to an appropriate chapter, or amended to be less restrictive and burdensome for business;
- 41% of the rules are proposed to be completely eliminated as obsolete, duplicative, burdensome and unnecessary;
- 23% of the rules are proposed to be amended to clean up obsolete language.

STATE AGENCY EVALUATIONS FY2017

Criteria for FY2017

The criterion listed below is provided for the purpose of alerting the agencies of the board's intent to gather data and provide evaluations in 2017. Actually doing so hinges 100% on the SBRFB getting adequate staff support.

The SBRFB has created criteria and ongoing training for the agencies so that they have a clear understanding of what the board is looking for. As we progress, the criteria have been updated annually in keeping with the work of the Board as well as the agencies. *The criteria listed below is to be considered ongoing (FY2017 and beyond) unless updates are published.*

The criteria used in making evaluations are listed at the top of each column in the evaluation table. Evaluation criteria for FY2017 are clarified below:

- A. The column ‘Respond to Small Business Comments in a Timely Manner’ refers to the initial comment in which the agency (by statute) has 60 days to respond. It also refers to subsequent letters that frequently occur back and forth as the Board works through an issue. The agency has 30 days to respond to these letters.
- B. The column ‘Provide Complete Response to Small Business Comment’ measures the *quality of content* in the initial agency response, as well as subsequent response letters.
- C. The column ‘Agency Responsiveness to SBRFB Requests’ includes all other communications, usually via email, that the board generates. This would include requests for input, answering a questionnaire, and general information.
- D. The column ‘Participate in Regulatory Fairness Meetings’ refers to meeting attendance by the agency liaison.
- E. The column ‘Participate in Regulatory Fairness Public Hearings’ refers to the agency providing decision-makers and knowledgeable personnel to answer questions brought in front of the Board at the public hearings.
- F. This column ‘Train agency staff on SBRFB Programs,’ refers to the board liaison taking training and then communicating what they learned with other agency personnel.
- G. The column, ‘Complete Small Business Impact Statement’ – only tracks whether the Impact Statement was completed or not. .
- H. Add a column called ‘Impact Statement Quality of Content’ that evaluates *the quality of content* in the Impact Statement.
- I. The column ‘Adherence to Non-Retaliation Policy.’ This is a place to track the rare, but disturbing, accusations of agency retaliation against a small business owner before or after their small business provides comments or brings an issue before the SBRFB.
- J. Regarding the column ‘Notify SBRFB of Small Business Comments from Public’ This is for the agency to notify the SBRFB about small business comments that come directly to the agency from the public and therefore do not otherwise come in front of the Board.

APPENDIX DOCUMENT A: Press Release from MO State Auditor regarding audit of the SBRFB.
NOTE: **boldface** has been added for emphasis.

Press Release, MO State Auditor

Broken state advocacy board fails small business owners, Auditor Galloway says

Audit finds Small Business Regulatory Fairness Board does not meet obligations **due to vacancies, inadequate support**

May 24, 2016

Missouri State Auditor Nicole Galloway today released her audit of the Small Business Regulatory Fairness Board. The board was created to serve as an advocate for small businesses across Missouri but has been plagued with issues that have undermined its effectiveness.

"The Small Business Regulatory Fairness Board has not received necessary support to fulfill its role as the voice of small business owners, leaving many citizens in the dark about a regulatory process that directly impacts their livelihoods," Auditor Galloway said. "The board is, by design, led by private citizens who help make the regulatory process less burdensome on business owners, but **without resources or state support, the board's volunteer members are not meeting this critical mission.**"

In January the board issued a report describing its own "sub-par" operations. Auditors reviewed board procedures and functions and found inadequate staffing, along with long-term **board vacancies** and lapsed terms, which are **due to be filled by the governor and legislative leaders.**

The audit found that over a two-year period, members did not review relevant proposed regulatory changes that could have impacted small businesses and did not receive input from small business owners about potential effects on their companies. The audit also raised concerns regarding the board's interaction with the Department of Economic Development. Board members said the department failed to offer essential staffing support and did not renew a contract for an online service that notified board members and small business owners of proposed regulatory changes. In its response, **the department [DED] described the purposes of the board as redundant with duties performed by a legislative committee [JCAR].**

"The board is intended to bring a small business owner perspective to the regulatory process and help eliminate unnecessary red tape," Auditor Galloway said. "My team has made a series of recommendations, and **I'm calling on the legislature and the Department of Economic Development to take action to ensure business owners can weigh in on policies that affect them.**"

The board received an overall performance rating of "poor," the lowest rating available. Auditors will return next year to conduct a follow-up review to determine whether recommendations have been implemented.

The complete audit report for the Small Business Regulatory Fairness Board is online:
<http://app.auditor.mo.gov/Repository/Press/2016030238982.pdf>

For more information, contact:

Gena Terlizzi, Dir. of Communications, Phone: 573-522-2358; Email: gena.terlizzi@auditor.mo.gov

Small Business Regulatory Fairness Board (SBRFB): Duties and Descriptions of the Administrative Support Required

Updated 4/4/2016

When the positions were proposed by the SBRFB members in 2011, the recommendations were for:

- Full Time analyst who can review the impact statements, agency analysis, small business comments, and work with the agencies to improve their compliance
- Part Time clerical support to keep up with the filings, logging, posting regulatory alerts, and other essential things to track the progress of regulatory fairness in Missouri.
- And, sufficient budget to operate the board, seek public comment, and report as required.

These recommendations were based on the data, comments, and activity we had experienced up to that date. Coincidentally, we discovered that this was exactly the level of support DED had estimated when the first SBRFB bill was proposed under Gov. Holden.

The full-time position is intended to be analytical, not clerical.

1. The analyst would administer the work of the SBRFB, providing consistency and organizational memory.
 - a. Over time, as SBRFB members, agency staff turnover, and administrations change. Note that other states have reported the same challenges with turnover.
 - b. The analyst would administer the working of the SBRFB, setting up meetings and hearings, working with small businesses, their associations, agency liaisons, and others as appropriate.
 - c. Ensure meeting minutes are developed, distributed, and retained.
 - d. The SBRFB members' role is to provide small business expertise, make judgement calls regarding all facets of the board's work, and fulfill the reason for its existence: to make MO friendly to small business by being proactive with the agencies during rule making and implementation, and to be the sole watchdog and resource for the interests of small business.
 - e. The analyst must track and retain all of the meetings, submissions, communications, and agency responses. This documents the work of the board.
2. The analyst would review the proposed regulations that come to us with Small Business Impact Statements (SBIS)
 - a. Review helps ensure the SBIS reasonable reflects the impact the proposed rule on small business.
 - b. Review includes checking that impacted small businesses were appropriately included in promulgation, work with the agency liaisons, JCAR, and others to ensure the statutory requirements are met to minimize the impact on small businesses.

- c. Back in 2011, agencies were promulgating regulations at a rapid rate. The SBRFB had received over 360 proposed regulations that fiscal year including 145 in the first quarter of 2011. The rate of regulation change continues today.
 - d. It takes considerable time to read, review, and analyze the SBIS to determine if the agency really did meet the statutory requirements of the law
 - e. SBRFB members own/run small businesses. None have the time to review even a portion of the proposed rules.
 - f. The analyst should review these rules sorting out those that need SBRFB review.
 - g. The SBRFB members' role is to be called upon for opinions, input, help in finding targeted small business owners who are in specific industries (that relates to one of the rules) for their input, discussion on feedback to agencies who have not provided complete or inadequate SBIS.
 - h. The analyst must track and date all of the submissions, communications, and agency responses for the purpose of having agency data with which to do the mandated annual agency evaluations. This also documents the work of the board.
3. The analyst would review the state register to catch rules that did not come to us and therefore had no SBIS.
- a. Rules that have an impact on small business need to have a SBIS. Some agencies have bypassed the SBRFB by stating that there is no impact to small businesses when in fact there is.
 - b. The only way to find these is to review the state register for such rules that affect small businesses.
 - c. Obviously, SBRFB members have very little time for this. Yet, nearly every time one of us has been able to review the state register, there have been rules slipping through that indeed did affect small businesses. Not every agency, not every time.
 - d. The analyst should review these rules sorting out those that need SBRFB review.
 - e. We have found that frequently the agency simply did not understand how a certain rule could have any impact on small business, and when it is explained from our point of view they see it. From that point on we hope the agency has a new perspective and we then receive SBIS on future rules – that is the goal.
 - f. The analyst would work with the agency liaison, JCAR, and others to ensure that the small business impact is minimized and statutory requirements are met. This could mean a rule is withdrawn until impacted small businesses have been consulted.
 - g. The SBRFB members' role is to be called upon for opinions, input, help in finding small business owners who are in impacted industries, and discussion on feedback to agencies who have not provided complete or inadequate SBIS.
 - h. The analyst must ensure that data, on all submissions, communications, and agency responses, is tracked to ensure timely agency responses and to prepare the mandated annual agency evaluations. This also documents the work of the board.
4. The analyst is responsible for shepherding small business comments through the process.
- a. When a small business owner submits a comment to the SBRFB, it begins a specific process that requires the board to communicate with the agency, the agency by statute must respond, and so on until resolution, impasse, or withdrawal. This process can take many months.

- b. The analyst would engage the agency and small business, facilitate discussion, and help the stakeholders reach resolution. In the past, just getting them talking has resolved many an issue.
 - c. Given the press of duties, the SBRFB can do little more than notify the agency and wait for the parties to report back in the future.
 - d. The lack of action, on prior comments, results in nearly no small business willing to trust SBRFB with their issues. Of course, this is the intent from those who have no desire to comply.
 - e. The SBRFB members' role is to be called upon for open public meeting in which comments are made, interviewing the representative from the affected agency, have direct discussions with the small business owner, provide small business expertise to the agencies, the small business owner who made the comment, and to the analyst.
- 5. The analyst would be a resource for and conduct outreach to state agencies. While many agencies have gained some understanding of their responsibilities under the SBRFB, some opportunities remain where individuals, boards, and commissions simply think they know best without small business input.
 - a. The analyst needs to facilitate updating / revising /creating new training materials for the agencies. The current training program is completely inadequate. It dealt with only one part of the SBRFB statute. A SBRFB member is working to update the training, but limited time is inhibiting progress.
 - b. Once materials are updated, the analyst would integrate it into the state system, and ensure the training is available for agency personnel.
 - c. The analyst coordinates with the agency liaison to ensure agency regulators and investigators attend training sessions at least annually.
 - d. At times, agencies have complained about being able to find impacted small businesses. The analyst would be able to facilitate this. On those occasions when SBRFB members helped, it usually only took two to three phone calls to find affected small businesses.
 - e. The SBRFB members' role is to provide content for updating training materials, be conscious of extending a cooperative hand to agencies; yet, be tough when appropriate.
 - f. The analyst must ensure that data on all of the activity, who attended training and from which agency, when training was offered, and feedback from the agencies back to the board of questions, suggestions, etc. is tracked. The purpose of having agency data with which to do the mandated annual agency evaluations, and this also documents the work of the board
- 6. The analyst would be a resource for outreach to the small business community.
 - a. The best time to reach out to small business owners is when they are undergoing difficulty with state regulations. Many small business comments can be generated when the SBRFB and support staff discover these problems and contact the affected small businesses and their associations.
 - b. Routine contact or visibility is required so that top-of-mind awareness occurs when issues develop in the future. This could include things such as a notice about the SBRFB – what it is, how it helps small businesses – frequently appearing in DED and other department newsletters.

- c. The analyst would develop contacts with key small business associations: to help locate small businesses, to reach out as rules are proposed, and seek input during the periodic reviews.
 - d. The analyst would oversee the reactivation of the regulatory alert system (the clerical staff can handle the day to day), reach out to stakeholders to enlist their subscription, and facilitate resolution of resulting comments on pending rules.
 - e. Updating the SBRFB website content, and ongoing updating of the board roster.
 - f. The SBRFB members' role is to provide ideas and contacts for outreach by the analyst/staff; personal provide outreach to their own spheres of business on a daily basis; be available for presenting about the SBRFB to business associations; oversee and provide website content; monitor the internal progress on reactivation of the regulatory alert system.
 - g. The analyst must ensure that all outreach activity, by staff or board members, is tracked and retained. This documents the work of the board.
7. The analyst would assist in developing the annual report.
- a. The analyst would compile the data above and present to the board, and incorporate the board's agency evaluation judgements into the report.
 - b. The analyst would compose some sections of text, and would get final approval from the board, prior to having it published by the state (pdf and/or print).
 - c. The analyst would disseminate the report to the agencies, legislators, and any other appropriate stakeholder by the end of the calendar year.
 - d. The SBRFB members' role is to help ensure the data is complete and accurate, make judgements about the agencies according to the stated goals and agency training, and publish on time.
8. The analyst would be a key resource for outreach during the rolling Periodic Review of regulations.
- a. Helping small business owners understand the opportunities the new periodic reviews creates for them, and how to interact. This will require consistent and targeted communications and outreach.
 - b. Help the SBRFB members to develop the internal process to handle the data coming out of the rolling periodic reviews.
 - c. The analyst should review agency submissions sorting out those that need SBRFB review.
 - d. The SBRFB members' role is to provide small business expertise, make judgement calls, and help ensure fairness for all MO small businesses.
 - e. The analyst must ensure all data for the meetings, submissions, communications, and agency responses, is tracked and retained. This documents the work of the board.

MO Small Business Regulatory Fairness Board (SBRFB) Board Member Criteria and Expectations

This document is to be used by the Board and those doing Board appointments as a reference to ensure that Board appointees are a good fit to carry out the work of the Board.

The Board members must be:

- Small business owner – current or former
- Geographic – from all parts of the state, both rural and urban
- Industry – broad and diverse in type of company the Board member owns

The SBRFB is a small but committed board, and it is of utmost importance that the appointee becomes actively involved: responsive to emails, attend Board meetings, participate in conference calls. Outside of the meetings, the members need to be willing spend at least a few hours per month doing the work of the board.

We communicate via email, conference calls, and use online meetings, so the board member must have the ability to participate in this way.

The Board normally meets face-to-face in Jefferson City once or twice per year. Other meetings are held via conference calls, approximately quarterly.

RMS 536.305

1. There is hereby established the "Small Business Regulatory Fairness Board". The department of economic development shall provide staff support for the board.

2. The board shall be composed of nine members appointed in the following manner:

- (1) One member who is the chair of the minority business advocacy commission;
- (2) One member appointed by the president pro tempore of the senate;
- (3) One member appointed by the minority leader of the senate;
- (4) One member appointed by the speaker of the House of Representatives;
- (5) One member appointed by the minority leader of the House of Representatives; and
- (6) Four members appointed by the governor.

3. Each member of the board, except for the public members and the chair of the minority business advocacy commission, shall be a current or former owner or officer of a small business. All members of the board shall represent a variety of small businesses, both rural and urban, and be from a variety of geographical areas of this state, provided that no more than two members shall represent the same type of small business.